1: Hollis G-5 (ca. 1894-1904) 1905
FL12 Masai FL12.

ten ājo: 'Ol-kila le-'ng-anaishi ai,' nesipa.

Ore ten ājo e-ñgorōyōni: 'Ol-kila le-papa,' nesipa.

true if he adds: 'By my sister's garment.' 626

Likewise if a Masai woman adds: 'By my father's garment,' it is true.

Ol-momai loo-'l-Maasae.

Trial by ordeal among the Masai. 695

Neinos kulikae-Maasae ol-momai.

Some Masai have a trial by ordeal.

Ten āji etaasa ñgania ol-bae torono, nēok o-sarge naisho ol-aigwenani, nējo ēokito: 'Ten staasa elle-bae, naaar eng-Ai.'

If a person is accused of having done something wrong, he drinks some blood, which is given him by the spokesman, and says: 'If I have done this deed, may God kill me.'

Ore ten etaasa elle-bae, nēñ; kake ten eitu eias, nemēñ.

If he has committed the crime, he dies; but if not, no harm befalls him.

'Singōliōïtin.

Songs.

O-singōlio le-'ng-ōmono e-'ng-Ai.

A prayer to God [1]. 782 844

Eisho'ñgorōyokoo-'l-Maasae p' eisho eng-ae-ñgorōyōni.

Masai women do as follows when one of their number gives birth to a child.

Neitururo; ne'yaki idya natōïshe kulle, nēyeñg ol-kerr āji Ol-oipokieki eng-aji, araki Ol-kipoket.

They collect together and take milk to the mother; they then slaughter a sheep, which is called, The purifier of the hut, or simply The purifier.

Naa 'ñgorōyok naayeñg oopeny, neinos aamut.

The women slaughter the animal by themselves, and eat all the meat.

Menyikaki 'l-lewa en-nēyeñgye, amu ājo em-bariany.

No man may approach the spot where the animal is slaughtered, for it is considered unlawful.

Ore p' eidip, neinyōtōto aarany, nējo:

When the women have finished their meal, they stand up and sing the following song: [539]

[1] Masai women often pray twice daily. Men and children usually only pray in time of drought, or when a cattle plague is raging.

5: Maguire G-5 (no date) 1928
FL12 Masai FL12
Kisongo

E-TAREMU EN-GIOO : ABORTION

Abortion is rare.[1] Should a woman cause herself to abort, the matter is left to the women of the kraal, who generally beat the culprit. 682

If a woman is made to abort by her husband or by another man, the matter is again left to the women. They may beat the culprit, but the more usual procedure is for them to take an ox of the abortionist's to some quiet place and beat it to death with sticks. The women then eat this ox, but no men or no pregnant women may be present while they are doing so.[2]

IL-DEKETA : CURSES

If a warrior should curse an Elder, he must offer him a cow, a calf and a bottle of honey. If he does not do this, he will die.[3] 683

If one warrior is cursed by another, he may try to kill him. If he succeeds in doing so, he is liable to no penalty. On the other hand, he may bring the matter before the Council of Elders, who will fine the guilty party. [692]

IL-MOMA LOO-'L-MAASAE : MASAI ORDEALS

Eng-duo : The Bow[4]

A strung bow is laid on the ground and the deponent swears in front of the Elders that his words are true. He then steps over the bow. Should his words be true, no harm will come to him, but should he be telling a lie, he will have bad luck and may shortly die. 695● [777]

[1] During three and a half years spent with the Masai of Tanganyika Territory, I came across only one case of abortion. In this, the husband had caused his wife to abort, as he was jealous of the father of the child. This man was a warrior of the same age as that to which the husband belonged.

[2] The converse of the custom whereby no women may see meat for the warriors' consumption before it has been cooked.

[3] For examples of Masai curses, see Hollis, *The Masai*, p. 344.

[4] *Eng-duo* is no longer regarded very seriously by the younger generation of Masai, and is falling into disuse in consequence. The other ordeals, particularly *Eng-itati*, are still regarded with awe, and I think it would be difficult to find a Masai living with the Tribe who would be prepared to testify falsely under ordeal.

5: Maguire G-5 (no date) 1928
FL12 Masai FL12
Kisongo

Eng-itati : The Reim

695 A short reim is greased with butter at both ends. The accused grasps one end with his left hand and his accuser the other, also with his left hand. The accuser is then told to cut the reim in the middle with a knife or sword which he is given for the purpose. If he does so and is making a false accusation, he will die. The accused may also be called upon to cut the reim in support of his defence. A similar fate will befall him if he is lying. (This form of oath is considered very binding, and no Masai will enter upon it lightly. It may be compared with the Nandi ordeal described on page 77 of *The Nandi* by Sir Claud Hollis.)

Em-bere : The Spear

The iron-shod haft of a spear is driven into the ground for about a foot, and is then withdrawn. The deponent urinates, and then spits into the hole thus made. No one may look while he is doing this, and all turn their backs. He then swears that his words are true. The Elders then fill in the hole with earth and stamp it down. If the deponent is lying, he will die.

En-aishó : The Honey-wine

If a man is accused of theft and denies it, he must drink from a gourd of honey-wine in front of the Elders, having sworn that he is innocent. If he is telling the truth, he has nothing to fear, but if he is guilty he will have no more luck [777] in life and will probably end by being killed by a lion.

It is an axiom of the Masai that no punishments should be laid down in the event of a man being discovered to have, deliberately, made a false oath. The matter is left to God, and the offender is invariably suitably punished by Him.

R. A. J. MAGUIRE.

7: Hailey G-4 (No date) 1950 FL12 Masai FL12

THE ORGANIZATION OF THE NATIVE TRIBUNALS

692 As regards the administration of native justice, reference has been made above to the introduction of the system of Native Tribunals in 1918. It became obvious that these Tribunals were not generally recognized by the Masai, who preferred that such issues as arose between them should be settled in the customary manner by the Headmen or Elders. At present there are only two regularly constituted Tribunals in the Narok and two in the Kajiado District, with an Appeal Tribunal in each district.[1] Three of these Tribunals consist of a permanent salaried President and three salaried Tribunal Elders, taken from a panel of eight to twelve Elders; in Ngong the Tribunal has five Elders. The Tribunal Elders represent different tribal Sections and are nominated by the District Commissioner after consultation with the Headmen and tribesmen. There are still a few Chiefs on the Tribunals, but in accordance with the policy followed elsewhere in Kenya, these are now being removed. There is in addition a loosely constituted Tribunal in the Loita with a President and an indefinite number of members, but they only hear a small number of cases a year.

Two of the Presidents receive salaries of 50s. and 25s. a month; the others [465] a sitting fee of 10s. a day. In two Tribunals the Elders receive 40s. a month and 18s. a month; in the others they receive a sitting fee of 5s. a day. The Appeal Tribunals are composed of members of the Local Native Authority Councils detailed at each sitting of the Council to hear such Appeals as are pending, an unusual but apparently a satisfactory arrangement.

691 The preference for referring cases to the arbitration of local headmen or 692 elders persists, and the civil issues which come before the regular Tribunals are few in number and refer mainly to matrimonial issues. In 1946, for example, the Native Tribunals dealt only with the following cases:—

	Number of Original Cases	Appeals to Native Appeal Tribunals	Appeals to District Commissioners	Appeals to Provincial Commissioner
Civil	163	20	6	3
Criminal ..	95	Not Available	..	..

These figures exclude, however, the large number of cases referring to breaches of the Poll Tax Ordinance, which in Narok alone were over 500 in 1946 and over 1,500 in 1945.

695 Judging only from such figures as are available for the appeals to Administrative Officers, the decisions of the Tribunals appear to have been generally accepted, but it is difficult to arrive at any judgment on the matter in view of the restricted field of civil issues or of true criminal issues which have come before the Tribunals. In paragraph 417 of his study of the Kenya Native Tribunals Mr. A. Phillips has called attention to the necessity for a close supervision over the exercise of criminal jurisdiction by Tribunals such as these, which are still at such a rudimentary stage of development, and he further points out that in civil issues this is in particular necessary in order to prevent

[1] These details differ from those given at page 141 of the Report on Kenya Native Tribunals, A. Phillips, 1945.

7: Hailey G-4 (No date) 1950 FL12 Masai FL12

695 the forcible execution of decrees for the custody of women and children in a manner repugnant to the principles of humanity.

CONCLUSION REGARDING THE VALUE OF THE SYSTEM NOW IN FORCE

000 Looking at the system of native administration in Masailand as a whole, those who are now most closely concerned with it regard the position as far from satisfactory. Consideration has lately been given to a number of changes in detail. It has been proposed that there should be a Masai Council at Ngong, consisting of the 20 members selected from the two Local Native Councils, which would deal with all questions affecting the whole of the Masai, leaving the two Local Native Councils to deal with purely local questions, such as applications for trading plots or the expenditure of local Treasury funds. This would no doubt be a simplification of the present procedure, but it will be realized that the existing method of constituting the Local Native Councils, while designed to secure a representation of the tribesmen in general, has the effect of excluding the Headmen who carry most weight with them.

A scheme has also been considered for making a more definite delimitation of the Section boundaries, in order to enable the formation of Committees of Control over grazing, and to assist the introduction of a system of destocking. It is difficult to estimate the extent to which the soil in the Masai Reserve actually suffers from deterioration owing to overgrazing, for as has been pointed out, the facts are complicated by the existence of the great quantity of game in the Reserve.[1] There is no doubt, however, that the scheme referred to would be of benefit both from the administrative and the economic point of view, though its success must depend on measures to be taken for the improvement of water supplies, without which the delimitation of Section boundaries would be ineffective.

197 But the causes which have produced the present situation in Masailand are deep-seated, and a remedy cannot be found merely in changes in the present system of native administration. The chief obstacle to progress among the Masai is the persistence with which this conservative people have clung to customs and habits of life founded on the militant traditions of the past. Some effort has been directed to effecting changes in their custom, in particular as regards the position of the Moran. At the instance of the first Provincial [656] Commissioner (1911-1923) the tribe was forbidden to continue the warrior manyattas and the cohabitation of Moran with unmarried girls was also interdicted. More recently, a meeting of the Chiefs and Elders held at Ngong in 1947 agreed in principle that the period determining service as a Moran should be reduced to three years, and there is a further project for establishing Moran camps, which it is hoped may serve as an education in a more useful form of life.

000 It perhaps adds to the difficulty of effecting an improvement in the condition of the Masai that the problem has been viewed from two different standpoints by Europeans in Kenya. There are some, both officials and non-officials, to whom certain aspects of the Masai character have always made a strong appeal. They have in particular been attracted by the courage, frankness, and loyal sense of comradeship shown by the Morans. On the other

[1] See page 10 of the Report on the Financial Position and System of Taxation of Kenya, Col. No. 116, 1936.

from each side suckled each other's babies. Peace was then kept till it suited one side to break it. With Bantu tribes the Masai sometimes made mock blood-brotherhood with intent to deceive, for they have no blood-brotherhood of their own. As among the Nandi, grass is a sign of peace, and a handful of grass constitutes a plea for mercy recognized by the Masai and those whom they count as more or less their equals, the *Il-magati* or " enemies," such as other pastoralists, but not *Il-mesh*, the Bantu agricultural tribes.

Legal Sanctions

The Masai legal system seems to be less organized than that of the Nandi, and to depend even more on the force of public opinion than on the position and status of the council leader. It appears that only in cases of homicide is there anything like a regular procedure. The Masai distinguish between intentional and accidental homicide, the difference being that for the latter there is no blood feud and the amount of compensation is smaller. The number of blood-cattle paid as compensation, *in-kishu oo-l-oikop*, " murder cattle," varies, but may be as high as two to three hundred for a man; Hollis says 50 for a boy, and Merker 19 head of cattle and 19 goats and sheep for a woman. Fosbrooke gives the figures as 49 for a circumcised man, and 29 for a woman or uncircumcised man. The Il-Arusa are recognized as a group which pays and receives blood-cattle. The murder may be avenged by the dead person's brothers who may try to kill the murderer; and if compensation is not paid, the resulting feud may involve all agnatic kinsmen on both sides. It is not clear whether killing of the murderer makes the avengers also liable to compensation. If the victim belongs to the same sub-clan as the murderer, no compensation is payable. If they belong to different sub-clans of the same clan, or to different clans, all members of the murderer's sub-clan contribute, and the cattle are divided among the members of the victim's sub-clan after his senior brother has received half the stock. When a settlement has been made, peace is made between the families concerned by an exchange of garments. Maguire gives details of three methods of dealing with cases of murder. (1) The relatives of the victim take all the murderer's cattle; they hold a council and, after giving a few cattle to certain elders and old women, the bell-oxen, herd-leaders, and cows near calving are returned to the owner; the rest they divide among themselves. (2) If action is not taken at once, the relatives of the murderer send a stick to the relatives of the victim, the acceptance of which implies an agreement to meet and settle the matter, and compensation is arranged, the figure named being 40 head of cattle, with nine more added to symbolize the human body (reckoned by the number of its orifices). (3) Sometimes the relatives of the victim do not take action for two years or more; they then raid the murderer's kraal by night and demand the number they want. For killing a smith, *ol-kunoni*, no compensation was payable, nor was there a blood feud. If a smith killed a Masai, several warriors set out and killed several smiths. Theft (except of cattle) is apparently considered of little account: " if a Masai steals milk or meat or other small things, he is not fined. Grown-up people rarely steal," says Hollis. For cattle thefts, the thieves when caught were fined, seven head from each man concerned.

The general principle that a man is entitled to compensation for a wrong suffered is recognized by all Masai; and this recognition is extended to " foreigners " like Dorobo, provided the people concerned are well known to each other. On being accused, a man may submit to an oath, *ol-mumai*. In some cases a diviner of the type called *ol-goiatiki* by Merker is employed to find a guilty person. The whole subject of Masai legal institutions needs detailed investigation.

Modern Administration

The Masai political structure has proved even more difficult of adaptation than that of the Nandi, since it lacked the clear-cut *pororiet* divisions of the latter. Up to 1918 the chief laibon in Kenya was accepted by the Administration as a paramount

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only in putting forward property claims, and then only in the rare cases in which self-help is not preferred to legal procedure. The prosecution of a punishable deed does not take place by official action, but only on the basis of a complaint raised by the injured party. Judicial proceedings are generally customary.

685 The procedure in the penal case of a livestock theft, which occurs frequently, is to be shown. It is to be assumed that an ox has been stolen in the pasture. If the boy tending the livestock observed the theft, he notifies the owner of the herd (father or brother of the herdsman) upon coming home in the evening. Otherwise the wives of the owner, in looking over the livestock, immediately notice the loss, since they know every head precisely. All the conversation in the kraal only revolves around the theft, and through that it becomes known on that same evening, not only in the home kraal, but also in the neighboring ones. The friends of the one robbed declare themselves ready to pursue the thief and track down the stolen head of cattle. If their investigation leads [692] to their discovering the ox or parts of it, so that the thief can be convicted, there are as a rule no judicial preceedings, since the perpetrator and his accomplices usually immediately declare themselves ready to pay the customary fine. If, however, the investi- [787] gation is without success, the person robbed turns to a sorcerer [694] (ol goiatiki), who, on the basis of an oracle (en gidon), gives him a description of the appearance of the thief, whereupon the one robbed will accuse of the theft a man who fits this description. The • 695 one so accused appears in the following proceedings as defendant, 685 in the same way as, say, one who is charged on circumstantial [693] evidence. The one robbed selects as leader of the proceedings a respected old man who must have formerly once been speaker of [202] the warriors. This man determines /219/ the day and place of the [237] proceedings and has this announced by a crier, who goes to the neighboring kraals, draws attention to himself by blowing a kudu or oryx horn, and informs the approaching people about the matter. Further, the judge summons plaintiff, defendant, and possibly witnesses by messengers. If the defendant refuses to appear, he is forcefully led up by friends of the plaintiff. Anyone may appear a as a witness. Relatives of the defendant may refuse both to give

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685 testimony and to appear. Other witnesses who do not appear are punished with a beating by the party of the plaintiff. The proceedings, in which only male individuals may participate, take place as a rule under a shade tree close to the kraal in which the judge lives. Each new arrival, after he has greeted the judge, squats down on the ground in front of him. After those who were invited and a larger number of listeners have appeared, the proceedings begin. The judge rises and says the following prayer: 'Ng ai dadjaba ijok, jo ijok e magilo, jo
[782] ijok ń gischu = May God protect us, may he give us strength and livestock, to which those assembled reply: eha or escha (may he give). Then they proceed with the matter. Plaintiff, defendant, and witnesses are heard, one after the other. They assert the truth either by the word ewai = in truth, aischa 'Ng ai ń gischu = so certain that God may give me livestock, or by various curses; maoa 'Ng ai means: may God kill me if I speak an untruth; maoa en abere = may a spear kill me if I lie. With this last formula, one picks up a little sand with the spear point and brings this to the tip of the tongue. Another curse consists of chewing a few blades of grass and with that saying the words: madaduarigí kuna ń gonjet ten eledjer ata 'Ng ai, i.e., may this grass be poison to me if I have lied before God.

For exacting truth, torture is customary, tena en obíni, i.e., tie the string! The string of a bow is tied so tightly around the upper arm of the defendant that it cuts into the flesh. If the testimony has not succeeded in convicting the defendant and if he cannot prove his innocence by an alibi, an ordeal is used. The most common is the ol momai l os sarge, i.e., the ordeal of the blood. The defendant is given a bowl with a mixture of blood and milk. Before he drinks, he says the words: 'Ng ai a-ok elle sarge, tena nanu ajawa ena geteń, naga elle sarge, i.e., God, I drink this blood, if I have taken that head of cattle this blood will kill me. If the defendant does not die after eight to fourteen days, proof of his innocence is provided by that. Another ordeal is the ol momai l en jerta natoijo, i.e., the ordeal of the dry wood. By accepting these, he invites God's punishment upon himself if he is guilty. He will then soon /220/ be dead like the dry branch, whereas otherwise he will remain vigorous and healthy, as the green one still is. Less common is the

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• 695 685 ol momai l eñ gauo, the ordeal of the bow. A bow is placed on the ground and a magic horn is set at either end of it. This is a goat horn that is filled with a medicine made by a sorcerer. As soon as the defendant has stepped over the bow, his lot will be, if he is guilty, the punishment of God, that is, in this case death. The effect of the ordeals rests on the firm belief in them. The guilty one is convinced that the punishment of God will have to strike him. He imagines that he is ill and sees his salvation only in an open [783] confession. He goes to the one robbed, confesses his deed, pays the customary fine, and begs for forgiveness. Only by gaining the latter can he escape the consequences of the false oath. The one robbed [572] must in this case -- if he himself does not wish to invite the punishment of God on himself -- grant the pardon and does so through words and spittings, whereby at the same time a friendship is initiated between the two. Besides the aforementioned ordeals there are two others which are not accompanied by curses. The ol momai l ol origa l en gulugok or ol momai l ol origa l eñ gob = the ordeal of the stool made of earth. The defendant must sit down on a specially prepared lump of earth. If this crumbles under him, he is regarded as guilty. The other one, the ol momai l eñ gine (of the goat), is used only if the defendant is a non-Masai. The defendant, standing, takes a goat between his legs and cuts an ear off it. If the blood issuing from the cut spatters him, he is guilty.

The majority of the assembly decides whether and which ol momai is to be used. The accused must submit to the ordeal, and, to be sure, only he alone. He may not substitute a proxy. It is never used against witnesses and plaintiff. The ordeal always constitutes the conclusion of the session, which the leader then terminates with the same prayer with which he began it.

If the ordeal has done no harm to the defendant within ten to fourteen days, he is completely cleared of suspicion. The one [787] robbed turns to a sorcerer (if he had already turned to such a one for the first proceedings, he now goes to another one), who again, through the eñ gidoñ, gives a description of the guilty one. As soon as the one described is found, there are proceedings against him.

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562 694 695 Women are also entitled to make a complaint. Evidence presented by witnesses is valid only to the extent that the persons assembled for the proceedings wish to be convinced by it.

683 [692] The crime of sorcery is only rarely dealt with in a judicial assembly. For the most part the one bewitched, after he has learned from an ol goiatiki the name of the bewitcher, prefers to induce the latter, through gifts, to bewitch him healthy again. Thereupon the two conclude friendship /221/ or, however -- and this not infrequently happens -- the bewitched one now kills his opponent, and, to be sure, without inviting blood revenge upon himself because of it.

681 648 [575] [781] There are no secret societies for the purpose of legal actualization or for other purposes. Bier tests or the belief that the dead person will reveal the murderer in a dream are unknown. The Masai do not live with other peoples in such a relationship that the latter could demand or request expiation for murder or some other crime or misdemeanor committed by a Masai on a non-Masai. In this case, therefore, the deed remains unexpiated, whereas the Masai as a rule practice retaliation if the deed was committed on one of their people. Whether or not the murder committed on an Asá or an ol Kuafi by a Masai is expiated depends in each case on the greater or lesser degree of friendly relations that exist between the communities of the murderer and the one murdered. In most cases expiation does not take place, whereas if the injured one is a Masai, his fellow tribesmen will answer with war.